

1 WO  
2  
3  
4  
5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 Gene Edward Scott, II,

No. CV-20-00087-PHX-ESW

10 Plaintiff,

**REPORT AND  
RECOMMENDATION**

11 v.

12 Army Review Boards Agency,

13 Defendant.

14  
15 **TO THE HONORABLE STEPHEN M. McNAMEE, SENIOR UNITED STATES**  
16 **DISTRICT JUDGE:**

17 Pro se Plaintiff Gene Edward Scott, II has filed a Complaint suing the Army Review  
18 Boards Agency, challenging the Army Military Correction Board's denial of his request to  
19 obtain a discharge upgrade (Doc. 1). The Court screened Plaintiff's Complaint pursuant to  
20 28 U.S.C. § 1915 (e)(2), found that Plaintiff stated a cognizable claim, and ordered the  
21 Defendant to answer (Doc. 8 at 3, 4). As of the date of this Report and Recommendation,  
22 Defendant has not been served or otherwise appeared.

23 Pending before the Court are Plaintiff's "Motion to End Case" (Doc. 9) and "Motion  
24 to End Case But Without Fault On Either Party" (Doc. 10). Plaintiff is requesting that the  
25 Court dismiss his Complaint without prejudice because "[t]he Army haven't [sic] finish  
26 reviewing my other original case." (Doc. 9). The Court may deem the motions to be  
27 motions to dismiss pursuant to Fed. R. Civ. P. 41(a)(1).

28 For good cause shown,

1       **IT IS RECOMMENDED** that the Court grant Plaintiff's "Motion to End Case"  
2 (Doc. 9) and "Motion to End Case But Without Fault On Either Party" (Doc. 10).

3       **IT IS FURTHER RECOMMENDED** that the Court dismiss Plaintiff's Complaint  
4 (Doc. 1) without prejudice and direct the Clerk of Court to terminate this case.

5       This Report and Recommendation is not an order that is immediately appealable to  
6 the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed. R. App. P.  
7 4(a)(1) should not be filed until entry of the District Court's judgment. The parties shall  
8 have fourteen days from the date of service of a copy of this Report and Recommendation  
9 within which to file specific written objections with the Court. *See* 28 U.S.C. § 636(b)(1);  
10 Fed. R. Civ. P. 6, 72. Thereafter, the parties have fourteen days within which to file a  
11 response to the objections. Failure to file timely objections to the Magistrate Judge's  
12 Report and Recommendation may result in the acceptance of the Report and  
13 Recommendation by the District Court without further review. Failure to file timely  
14 objections to any factual determinations of the Magistrate Judge may be considered a  
15 waiver of a party's right to appellate review of the findings of fact in an order or judgment  
16 entered pursuant to the Magistrate Judge's recommendation. *See United States v. Reyna-*  
17 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Robbins v. Carey*, 481 F.3d 1143, 1146-47  
18 (9th Cir. 2007).

19       Dated this 20th day of July, 2020.

20  
21  
22  
23  
24  
25  
26  
27  
28



20  
21  
22  
23  
24  
25  
26  
27  
28

---

Honorable Eileen S. Willett  
United States Magistrate Judge